IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE C.N.RAMACHANDRAN NAIR

WEDNESDAY, THE 13TH SEPTEMBER 2006 / 22ND BHADRA 1928

OP.No. 7447 of 2003(J)
---

PETITIONER:
---

TOM.K.THOMAS, "ANUGRAHA", POTTAKUZHI,
MAMANGALAM ROAD, KOCHI-682 025.

BY ADV. SRI.K.P.DANDAPANI

RESPONDENTS:
---

1. THE ASSISTANT EXCISE COMMISSIONER,
ERNAKULAM.

2. THE DEPUTY TAHASILDAR (RR), KANAYANNUR
TALUK, ERNAKULAM, KOCHI-682 011.

BY GOVERNMENT PLEADER SRI. ABOOBACKER

THIS ORIGINAL PETITION HAVING BEEN FINALLY HEARD ON 13/09/2006, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

ORDER ON CMP 12947 OF 2003 IN OP 7447 OF 2003

DISMISSED

13.9.2006 SD/-C.N.RAMACHANDRAN NAIR, JUDGE.

APPENDIX

PETITIONER'S EXHIBITS:

EXT.P1 TRUE COPY OF THE DEMAND NOTICE NO. 94/92-93 DATED 24.1.2003 ISSUED BY THE 2ND RESPONDENT TO THE PETITIONER.

EXT.P2 TRUE COPY OF THE COMPLAINT DATED 9.9.2002 SUBMITTED BEFORE THE CIRCLE INSPECTOR OF POLICE, CENTRAL POLICE STATION, ERNAKULAM BY THE CIRCLE INSPECTOR OF EXCISE, ERNAKULAM.

EXT.P3 TRUE COPY OF THE ORDER OF THIS HON'BLE COURT IN CRL.M.P.NO. 18/2003 IN CRL.M.C. NO. 12/2003 DATED 3.1.2003

FIRST RESPONDENT'S EXHIBITS:

ANNEXURE A TRUE COPY OF THE LETTER DATED 18.10.01 OF ADDL. SALES TAX OFFICER, II, ERNAKULAM.

TRUE COPY

P.S. TO JUDGE.

C.N.RAMACHANDRAN NAIR,J.

---

O.P.NO. 7447 OF 2003

---

Dated this the 13th day of September, 2006

JUDGMENT

Petitioner is challenging recovery proceedings for recovery of an amount of Rs. 1,56,056/- which is the amount advanced by the Government for supply of cash chest for which orders were placed on the firm of which petitioner was a partner. The case of the petitioner is that he was a partner of the firm for six years from 1.4.1988 to 1.4.1994. According to him, he was not a partner at the relevant time. However, petitioner has not chosen to make the partnership firm or other partners as parties in the O.P. Admittedly other partners of the firm are petitioner's father, mother and brother. It is stated in the counter affidavit that it is a fit case for launching prosecution for cheating because after receiving the amount with agreement to supply goods, the suppliers have backed out of the contract. Counsel appearing for the petitioner contended that principal amount is already paid which is not on record. In any case, petitioner and other partners cannot escape liability by paying principal amount. The price of the

item for which orders were placed would have gone up so high that the Government obviously cannot get the item at the same price. Therefore petitioner's case for settlement on payment of actual amount received is only to be rejected. However, it is seen that respondents have not demanded any compensatory cost, but only interest. If balance liability is not settled within one month from the date of receipt of a copy of this judgment, respondents will proceed for recovery of the amount due against all partners of the firm besides launching prosecution against partners. Recovery proceedings will remain stayed for payment as above, and if liability is settled as above, then there will be direction to respondents not to launch any prosecution against the partners on record.

O.P. is disposed of as above.

(C.N.RAMACHANDRAN NAIR)
Judge